

**REPORT - PLANNING COMMISSION MEETING**  
**August 11, 2005**

**Project Name and Number:** Construction Hours Municipal Code Text Amendment (PLN2005-00331)

**Applicant:** City of Fremont

**Proposal:** To amend the Fremont Municipal Code to regulate construction hours

**Recommended Action:** Recommend to City Council

**Location:** Applicable citywide

**Environmental Review:** This project is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3)—no possibility of a significant effect on the environment.

**Public Hearing Notice:** Public hearing notice was sent to *The Argus* on July 25, 2005 to be published by July 28, 2005.

**Executive Summary:** In the City of Fremont, construction hours have generally been regulated by staff-recommended conditions of approval included within development entitlements. Construction has typically been limited to between the hours of seven a.m. and seven p.m. on weekdays and between nine a.m. and six p.m. on Saturdays and Sundays. In or near residential areas, however, Sunday construction has usually not been allowed. In industrial districts, construction hours have sometimes been extended to between six a.m. and ten p.m. on weekdays and between eight a.m. and eight p.m. on weekends. Holidays have not been differentiated from weekdays. Although these hours have become general requirements for development projects, the conditions of approval recommended by staff have never been formally codified. This Code amendment would increase fairness and predictability for applicants while providing for community members' comfortable enjoyment of life and property.

**Background and Previous Actions:** Before this Code amendment, construction hours were included within the conditions of approval for development entitlements. If, based on community complaints, staff verified that construction hours had been exceeded, administrative citations could be issued, or inspections could be withheld in order to enforce the set construction hours. The need for standardization and clarity has been increasing in recent years because of the nature of infill projects within a maturing community.

Staff compared a sample of Fremont's construction hours in relation to other cities. Fremont construction hours were similar in many regards, but there were also shortfalls in the sophistication of Fremont's means of regulating construction times. In general, more urbanized cities had shorter daily allowable construction hours. The most common morning time was seven a.m., but the evening hours varied more, ranging between five-thirty and ten p.m. Some cities did call for different hours nearby residential, similar to the recommendation herein.

This proposal is to modify the text of the Fremont Municipal Code to limit construction hours near certain sensitive land uses. By increasing the flexibility of these rules, a compromise is being sought between clarity of the standards and enforceability of their provisions.

**PROJECT CONSIDERATIONS:**

Basic Components of the Amendment:

Construction activity for a "development project," as defined in FMC Section 8-2135.3, is proposed to be limited within certain distances of specified uses. The choice of hours was based on a survey of California cities in comparison to past City of Fremont policy.

Hours limited:

When within 500 feet of land uses with sleeping quarters, hours would be restricted to weekdays (including holidays) between seven a.m. and seven p.m. and Saturdays between nine a.m. and six p.m. No construction

would be allowed on Sundays on the basis of longstanding city policy and due to the fact that people tend to retire earlier in the evening because it is the day before the start of the traditional workweek. All other projects would be limited to the weekday hours of six a.m. to ten p.m. on weekdays (including holidays) and eight a.m. to eight p.m. on Saturdays and Sundays. These hours do not represent a departure from current practice, but rather a codification of long-standing practice.

*Resident homeowner exception:*

Often, residents who work during the week are only able to do home improvement projects in the late afternoon or on weekends. Restricting these hours would create a hardship—effectively forcing the resident to hire someone to do the work if he or she could not take the necessary time off from work. This amendment contains an exception lengthening the time that resident homeowners and their immediate families may do work on their own single-family detached homes. The recommendation herein is that resident homeowners should be able to work until eight p.m. on weekdays and between eight a.m. and eight p.m. on weekends.

*Modification authority:*

Because there are a variety of permitting authorities within Development and Environmental Services, any modification of allowable hours could be permitted on the authority of the Development and Environmental Services Director or the City Manager's designee. The modification could be approved in order to facilitate staff supervision or inspection, when the applicant is required to comply with more restrictive provisions of this Code, or when the Director makes a finding that such modified construction hours would result in an equal or superior level of the comfortable enjoyment of life and property by the community. This section would give latitude to the Director to make exceptions in such cases, for example, as when a major highway or other noise source exists between the construction site and homes on the other side that are otherwise within 500 feet.

*Emergency Construction Exception:*

It is important to specify exceptions to standard construction hours in certain cases. Emergency utility or infrastructure work, such as repairing water or gas leaks, patching potholes, or restoring power, is time-sensitive and necessary for preserving the public health, safety, and welfare. Therefore, a special exception is included to exclude emergency work from construction hour restrictions so long as the repair work is reasonably necessary to prevent or repair an emergency condition.

*Plan notes and Placard requirement:*

Community members as well as subcontractors are often not aware of the approved construction hours. To reduce unfounded complaints and increase the likelihood that workers follow allowable construction times, two additional requirements are proposed as part of this amendment. Construction hours are to be noted on the cover sheet of the construction plans. In addition, a placard containing, at a minimum, summary project information, construction hours, and City staff contact information in a format specified by the Development and Environmental Services Department would be required onsite adjacent to the most visible public right of way.

*Violations/Enforcement:*

Violations of the hours would be considered a public nuisance as defined in Section 4-9115 for purposes of enforcement and remedy. Staff would also have the power to withhold inspections if construction hours were not observed. By using the placard, staff could encourage complaints to be directed to Development and Environmental Services staff. Follow-up with the permitting authority would be possible the next business day, while calls to the Police Department for egregious violations could be handled as public disturbances.

**General Plan Conformance:** The proposed project is consistent with the existing General Plan because the goal of reducing noise and associated nuisance for residents is consistent with current policies.

The City of Fremont General Plan has very basic noise limitations (last modified in 1991) to safeguard the community against noise pollution in many forms. These noise standards are based upon the measurement of a weighted average noise level called the "day and night average level" ( $L_{dn}$ ). This level is measured by a qualified staff person or consultant collecting readings with a sound meter at multiple times per day in order to compare the relative volume of the baseline reading with the potentially excessive noise. Some cities choose to regulate construction noise levels by hour of the day

in addition to or in lieu of basic codified hours. This is because, in addition to traffic and railroads, construction activity can be a disturbing temporary source of noise. However, specific noise standards, while being precisely defined, present an enforcement difficulty compared to the proposal to limit the hours of construction activity because of the required training, equipment, time, and coordination necessary to measure the average and offending noise levels. Except in exceptional cases, these proposed daily construction hour limits and existing limits on states of partial construction (in FMC Section 4-9115) should be effective in preventing nuisance conditions from existing.

The following land uses are identified in Figure 10-11 of the General Plan as having "normally acceptable" community noise exposure levels of sixty L<sub>dn</sub> or below:

1. Residential
2. Transit lodging motels, hotels
3. Schools, libraries, churches, hospitals, nursing homes

The primary concern noted in the Noise component of the General Plan's Health and Safety chapter is resident health--specifically avoidance of "irritability, wakefulness, and other conditions." Of these most sensitive uses identified above, residences, lodging facilities, (inpatient) hospitals, and nursing homes all have a similar need to promote resident's peaceful rest by avoiding noises that may cause wakefulness. The provisions of this amendment are primarily targeted toward reducing wakefulness and increasing peaceful evening and early morning rest hours.

Although the primary purpose is toward reducing wakefulness in sleeping quarters, modifications are anticipated to adequately address other uses sensitive to noise. Uses such as schools, libraries, churches, and courts have primarily daytime populations that need to minimize distraction to facilitate educational activities, religious worship, and legal proceedings. For instance, the Fremont Unified School District has elementary through high school class hours ranging from about seven-thirty a.m. until before three p.m. during the traditional school year. The summer school term (which rotates schools each year) is held between eight a.m. and one-twenty p.m. Private schools have roughly similar, but varying, instructional hours. Colleges, vocational schools, and adult schools frequently have day, evening, and weekend classes in order to cater to working students' varied schedules. Fremont library hours have changed frequently in the past, but branches are currently open no earlier than ten a.m., with some branches closing at nine p.m. on certain days of the week. Court is currently held from eight-thirty a.m. to four p.m. on weekdays and one evening per month at the Fremont Hall of Justice. Religious facility hours vary widely among denominations and individual facilities. The variability of operational hours among these land uses precludes the City's ability to limit construction hours uniformly through noise standards or standard construction hours applicable to all cases. Instead, a more effective and flexible general provision is proposed to allow modification of standard hours in order to reduce the effect of the disturbance on nearby uses as determined on a case-by-case basis.

The following General Plan goals, objectives and policies are applicable to the proposed project:

Goal HS 8: Noise at an acceptable level throughout the community

Objective HS 8.1: A noise environment which meets standards.

Policy HS 8.1.4: Control noise at its source to maintain existing noise levels, and in no case to exceed the acceptable noise levels as established in the Land Use Compatibility for Community Exterior Noise Environments (Figure 10-11).

*Construction hours have been previously controlled by conditions of approval. This amendment would strengthen the force of standards by codifying them to control nuisances associated with construction.*

Policy HS 8.1.5: Protect schools, hospitals, libraries, churches, convalescent homes, and other noise sensitive uses from noise levels exceeding those allowed in residential areas.

*Construction hours allowed within 500 feet of residential districts, residential uses, temporary lodging facilities, nursing homes, or inpatient hospitals are proposed to be restricted to reduce noise in these areas. Modifications to other*

*standard construction hours would be allowed when a finding is made that such modifications reduce the effect of public disturbance for other types of sensitive facilities.*

**ENVIRONMENTAL ANALYSIS:** The proposed project has been reviewed under the California Environmental Quality Act (CEQA) Guidelines and has been found to be exempt under section 15061(b)(3) because it has no possibility of having a significant negative effect on the environment. Any environmental effects should be positive in the form of reduced noise levels for the community.

**EXHIBITS:** Exhibit "A" Municipal Code text amendment

**Recommended Actions:**

1. Hold public hearing.
2. Find that the project is exempt from the California Environmental Quality Act per Section 15063(b) of the CEQA Guidelines.
3. Find that the project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Health and Safety chapter as enumerated within the staff report.
4. Find the public necessity, convenience and general welfare require the adoption of this Municipal Code text amendment (PLN2005-00331) because standard guidelines for construction hours will lead to an increase in the comfortable enjoyment of life and property by the public
5. Recommend PLN2005-00331 to the City Council in conformance with Exhibit "A" (Municipal Code text amendment).

**Exhibit "A"**  
**Construction Hours Municipal Code Text Amendment (PLN2005-00331)**

Section 4-9115.

- (h) Construction activity during hours other than those permitted in Section 8-2205 of this Code is a nuisance for the purposes of this chapter.

Section 8-2205. Construction hours--limitations.

- (a) Except as modified herein, construction activity for development projects<sup>1</sup> in any zoning district on any property within 500 feet of one or more residences, lodging facilities, nursing homes or inpatient hospitals shall be limited to the weekday hours of seven a.m. to seven p.m. and the Saturday hours of nine a.m. to six p.m., while Sunday construction is not allowed. Construction activity for projects not located within 500 feet of residences or inpatient hospitals shall be limited to the weekday hours of six a.m. to ten p.m. and the weekend hours of eight a.m. to eight p.m.
- (b) Resident homeowners and their immediate family members performing construction activity on their own single-family detached home shall be limited to the weekday hours of seven a.m. to eight p.m. and the weekend hours of eight a.m. to eight p.m.
- (c) This section shall not apply to construction necessary to prevent or repair an emergency condition, as reasonably determined by the Director of Development and Environmental Services or the City Manager's designee.
- (d) Projects requiring a permit under the authority of this Code shall have construction hours noted on the cover sheet of the construction plans and on an all-weather notice board conspicuously placed adjacent to the most visible public right of way before construction begins. The format and content of the notice board shall be prescribed by the Development and Environmental Services Department, and shall contain, at a minimum, summary project information, allowable construction hours, and City staff contact information.
- (e) The Development and Environmental Services Director or the City Manager's designee shall have the authority to modify these hours under any of the following conditions:
- (1) To facilitate staff supervision or inspection or when the applicant is required to comply with more restrictive provisions of this Code, State or Federal law.
  - (2) When, based upon the nature of nearby uses and/or site-specific considerations, he or she makes a finding that such modified construction hours are reasonably foreseeable to result in an equal or superior level of comfortable enjoyment of life and property by the community.
- (f) Violations of the provisions of this section shall be considered a public nuisance as defined in Section 4-9115 of this Code for purposes of enforcement and remedy. In addition to the provisions of chapter four, staff shall have the power to withhold inspections if construction hours are not observed.